

# State of South Dakota

## SEVENTY-NINTH SESSION LEGISLATIVE ASSEMBLY, 2004

716J0457

### HOUSE BILL NO. 1180

Introduced by: Representatives Rhoden, Adelstein, Bartling, Begalka, Burg, Deadrick (Thomas), Dykstra, Elliott, Engels, Gassman, Hackl, Hargens, Haverly, Klaudt, Lange, Olson (Ryan), Peterson (Jim), Sebert, and Teupel and Senators Duenwald, Apa, Dennert, Greenfield, Moore, Sutton (Dan), Sutton (Duane), and Symens

1 FOR AN ACT ENTITLED, An Act to exempt the gross receipts of certain transportation  
2 services from sales and use tax.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-45-12.1 be amended to read as follows:

5 10-45-12.1. The following services enumerated in the Standard Industrial Classification  
6 Manual, 1987, as prepared by the Statistical Policy Division of the Office of Management and  
7 Budget, Office of the President are exempt from the provisions of this chapter: health services  
8 (major group 80); educational services (major group 82) except schools and educational services  
9 not elsewhere classified (industry no. 8299); social services (major group 83); agricultural  
10 services (major group 07) except veterinarian services (group no. 074) and animal specialty  
11 services, except veterinary (industry no. 0752); forestry services (group no. 085); radio and  
12 television broadcasting (group no. 483); railroad transportation (major group 40); local and  
13 suburban passenger transportation (group no. 411) except limousine services; school buses  
14 (group no. 415); trucking and courier services, except air (group no.421) except collection and



1 disposal of solid waste; farm product warehousing and storage (industry no. 4221);  
2 establishments primarily engaged in transportation on rivers and canals (group no. 444);  
3 establishments primarily engaged in air transportation, certified carriers (group no. 451);  
4 establishments primarily engaged in air transportation, noncertified carriers (group no. 452)  
5 except chartered flights (industry no. 4522) and airplane, helicopter, balloon, dirigible, and  
6 blimp rides for amusement or sightseeing; pipe lines, except natural gas (major group 46);  
7 arrangement of passenger transportation (group no. 472); arrangement of transportation of  
8 freight and cargo (group no. 473); rental of railroad cars (group no. 474); water supply (industry  
9 no. 4941); sewerage systems (industry no. 4952); security brokers, dealers and flotation  
10 companies (group no. 621); commodity contracts brokers and dealers (group no. 622); credit  
11 counseling services provided by individual and family social services (industry no. 8322);  
12 construction services (division C) except industry no. 1752 and locksmiths and locksmith shops;  
13 consumer credit reporting agencies, mercantile reporting agencies, and adjustment and  
14 collection agencies (group no. 732), if the debt was incurred out-of-state and the client does not  
15 reside within the state. The following are also specifically exempt from the provisions of this  
16 chapter: financial services of institutions subject to tax under chapter 10-43 including loan  
17 origination fees, late payment charges, nonsufficient fund check charges, stop payment charges,  
18 safe deposit box rent, exchange charges, commission on travelers checks, charges for  
19 administration of trusts, interest charges, and points charged on loans; commissions earned or  
20 service fees paid by an insurance company to an agent or representative for the sale of a policy;  
21 services of brokers and agents licensed under Title 47; the sale of trading stamps; rentals of  
22 motor vehicles as defined by § 32-5-1 leased under a single contract for more than twenty-eight  
23 days; advertising services; services provided by any corporation to another corporation which  
24 is centrally assessed having identical ownership and services provided by any corporation to a

1 wholly owned subsidiary which is centrally assessed; continuing education programs; tutoring;  
2 vocational counseling, except rehabilitation counseling; and motion picture rentals to a  
3 commercially operated theater primarily engaged in the exhibition of motion pictures.

4 Section 2. That § 10-45-70 be repealed.

5 ~~—10-45-70. There is imposed a tax of four percent on the gross receipts from the~~  
6 ~~transportation of tangible personal property. The tax imposed by this section shall apply to any~~  
7 ~~transportation of tangible personal property if both the origin and destination of the tangible~~  
8 ~~personal property are within this state.~~

9 Section 3. That § 10-45-72 be amended to read as follows:

10 10-45-72. The tax imposed by §§ ~~10-45-70 to 10-45-81, inclusive~~, § 10-45-71 does not  
11 apply to any transportation service which the state is prohibited from taxing by federal law or  
12 the United States Constitution.

13 Section 4. That § 10-45-73 be repealed.

14 ~~—10-45-73. The transportation of agricultural products by the agricultural producer thereof~~  
15 ~~is exempt from the tax imposed by §§ 10-45-70 to 10-45-81, inclusive, if the producer transports~~  
16 ~~such products in a mode of transportation which is owned, leased, or rented by the producer.~~  
17 ~~However, if an agricultural producer transports another person's products for hire, such~~  
18 ~~transportation is subject to the tax imposed by §§ 10-45-70 to 10-45-81, inclusive.~~

19 Section 5. That § 10-45-74 be repealed.

20 ~~—10-45-74. Transportation services may only be sold for resale under the following~~  
21 ~~circumstances:~~

22 ~~—(1)—A transportation company may sell its services for resale to another transportation~~  
23 ~~company; or~~

24 ~~—(2)—A retailer that regularly delivers a majority of the tangible personal property which~~

1           ~~it sells to its customers by truck or other mode of transportation owned, leased, or~~  
2           ~~rented by such retailer may purchase for resale the services of a transportation~~  
3           ~~company for the delivery of such retailer's tangible personal property.~~

4           Section 6. That § 10-45-75 be repealed.

5           ~~10-45-75. Terms used in §§ 10-45-76 to 10-45-78, inclusive, mean:~~

6           ~~(1) "Cargo vessel," a single transport truck as defined in subdivision 10-47B-3(47);~~

7           ~~(2) "Fuel," gasoline, ethanol, methanol, liquefied petroleum gas, petroleum distillates,~~  
8           ~~lubricating oils and greases, glycol-based antifreezes, fuels used for off-highway~~  
9           ~~racing, solvents such as, but not limited to, petroleum naphtha, mineral spirits, or~~  
10           ~~stoddard solvents, and any other petroleum product delivered to a terminal by~~  
11           ~~pipeline, truck, or rail, any other motor fuel as defined in subdivision 10-47B-3(27),~~  
12           ~~and special fuel as defined in subdivision 10-47B-3(39);~~

13           ~~(3) "Fuel terminal transportation," the transportation of fuel from a terminal to a location~~  
14           ~~in South Dakota at which the fuel is unloaded. Fuel terminal transportation does not~~  
15           ~~include the transportation of fuel from a location other than a terminal;~~

16           ~~(4) "Terminal," as defined in subdivision 10-47B-3(42);~~

17           ~~(5) "Trip," the distance in road miles traveled by a cargo vessel from the fuel terminal~~  
18           ~~at which it was loaded with fuel to the most distant location in South Dakota at which~~  
19           ~~the fuel is unloaded, excluding miles not traveled within this state.~~

20           Section 7. That § 10-45-76 be repealed.

21           ~~10-45-76. In lieu of the tax imposed by §§ 10-45-70 and 10-46-57 on the transportation of~~  
22           ~~fuel, a transportation company may elect to be taxed on the fuel terminal transportation services~~  
23           ~~under the provisions of §§ 10-45-75 to 10-45-78, inclusive.~~

24           Section 8. That § 10-45-77 be repealed.

~~10-45-77. There is imposed a tax on the imputed gross receipts of any transportation company engaged in fuel terminal transportation who elects to be taxed under this section. The tax imposed by this section shall be on the imputed gross receipts as provided in this section. The imputed gross receipts from fuel terminal transportation shall be calculated on the basis of the number of cargo vessels and distance traveled on each trip as follows:~~

	Length of Trip	Number of Cargo Vessels	Imputed Gross
Zone	(in miles)	per Trip Transportation	Receipts from
A	50 or Less	1	\$ 64.00
A	50 or Less	2 or more	\$ 88.00
B	More than 50, but less than 100	1	\$120.00
B	More than 50, but less than 100	2 or more	\$165.00
C	100 or more, but less than 150	1	\$176.00
C	100 or more, but less than 150	2 or more	\$242.00
D	150 or more, but less than 200	1	\$224.00
D	150 or more, but less than 200	2 or more	\$308.00
E	200 or more	1	\$280.00
E	200 or more	2 or more	\$385.00

Section 9. That § 10-45-78 be repealed.

~~10-45-78. For the fuel terminal transportation subject to tax under §§ 10-45-75 to 10-45-77, inclusive, all subsequent transportation of that fuel is exempt from the tax imposed under this chapter.~~

Section 10. That § 10-45-79 be repealed.

~~10-45-79. The provisions of § 10-45-22 shall also apply to any taxes imposed by §§ 10-45-75 to 10-45-77, inclusive, on transportation services regardless of any special reporting election the taxpayer may have made.~~

Section 11. That § 10-45-81 be repealed.

1 ~~10-45-81. There are exempted from the provisions of this chapter and the tax imposed by~~  
2 ~~it, the gross receipts from transportation services associated with timber sale contracts entered~~  
3 ~~into prior to July 1, 1996, provided such contract has a duration of one year or less.~~

4 Section 12. That § 10-46-57 be repealed.

5 ~~10-46-57. There is imposed a tax of four percent on the privilege of the use of any~~  
6 ~~transportation of tangible personal property. The tax imposed by this section shall apply to any~~  
7 ~~transportation of tangible personal property if both the origin and destination of the tangible~~  
8 ~~personal property are within this state.~~

9 Section 13. That § 10-46-59 be amended to read as follows:

10 10-46-59. The tax imposed by §§ ~~10-46-57 to 10-46-61, inclusive~~, § 10-46-58 does not  
11 apply to any transportation service which the state is prohibited from taxing by federal law or  
12 the United States Constitution.

13 Section 14. That § 10-46-60 be repealed.

14 ~~10-46-60. The transportation of agricultural products by the agricultural producer thereof~~  
15 ~~is exempt from the tax imposed by §§ 10-46-57 to 10-46-61, inclusive, if the producer transports~~  
16 ~~such products in a mode of transportation which is owned, leased, or rented by the producer.~~  
17 ~~However, if an agricultural producer transports another person's products for hire, such~~  
18 ~~transportation is subject to the tax imposed by §§ 10-46-57 to 10-46-61, inclusive.~~